



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-015]

### 53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of 53-foot domestic dry containers (domestic dry containers) from the People's Republic of China (PRC) as provided in section 705 of the Tariff Act of 1930, as amended (the Act). For information on the estimated subsidy rates, *see* the "Final Determination" section of this notice.

**DATES:** *Effective:* [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Yasmin Nair, David Cordell (Singamas), or Ilissa Shefferman (CIMC), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-3813, (202) 482-0408 or (202) 482-4684, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On September 29, 2014, the Department published the preliminary determination of the countervailing duty (CVD) investigation of domestic dry containers from the PRC in the *Federal*

*Register*.<sup>1</sup> On September 30, 2014, China International Marine Containers (Group) Co., Ltd., Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., Qingdao CIMC Container Manufacture Co., Ltd., Xinhui CIMC Wood Co., Ltd., and Xinhui CIMC Container Co., Ltd. (collectively “CIMC”) submitted ministerial error comments regarding the *Preliminary Determination*. On October 9, 2014, the Department responded to these comments, stating that the issues raised by CIMC were methodological in nature and did not constitute ministerial errors within the meaning of the Department’s regulations.<sup>2</sup>

On November 6, 2014, the Department issued a post-preliminary analysis with respect to CIMC, as well as Hui Zhou Pacific Container Co., Ltd., Qingdao Pacific Container Co., Ltd., and Qidong Singamas Energy Equipment Co., Ltd. (collectively, “Singamas”).<sup>3</sup>

Between November 12, 2014 and November 19, 2014, the Department conducted onsite verification of CIMC’s, Singamas’s and the Government of the People’s Republic of China’s (GOC) questionnaire responses.<sup>4</sup>

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<sup>1</sup> See *Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 79 FR 58320 (September 29, 2014) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum to Richard Weible, Director, Office VI, AD/CVD Operations, Enforcement and Compliance, “Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China: Allegation of a Ministerial Error in the Preliminary Determination,” dated October 9, 2014, at 3.

<sup>3</sup> See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, “Countervailing Duty (CVD) Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China (PRC): Post-Preliminary Analysis Memorandum,” dated November 6, 2014.

<sup>4</sup> See Memoranda to Richard Weible, Director, Office VI, AD/CVD Operations, Enforcement and Compliance, entitled “Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China (PRC): Verification Report of China International Marine Containers (Group) Co., Ltd. (CIMC Group) and its cross-owned affiliates CIMC Containers Holding Co., Ltd. (CIMC Holding); CIMC Wood Development Co., Ltd. (CIMC Wood); Guangdong Xinhui CIMC Special Transportation Equipment Co., Ltd. (Xinhui Special); Qingdao CIMC Containers Manufacture Co., Ltd. (Qingdao CIMC); Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd. (Nantong CIMC); Xinhui CIMC Container Co., Ltd. (Xinhui Container); and Xinhui CIMC Wood Co., Ltd. (Xinhui Wood) (collectively, CIMC),” dated January 14, 2015; “Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China (PRC): Verification Report of Hui Zhou Pacific Container Co., Ltd. (HPCL), Qingdao Pacific Container Co., Ltd., (QPCL) and Qidong Singamas Energy Equipment Co., Ltd., (QSCL) and their holding company, Singamas Container Holdings Limited

On February 6, 2015, CIMC, Singamas and its holding company, Singamas Container Holdings Limited (Singamas Holding); the GOC; Petitioner; and Crowley Maritime Corporation and Crowley Liner Services, Inc. and Sea Star Line, LLC (hereafter, collectively, “Crowley”) filed case briefs. On February 12, 2015, CIMC, Singamas, Singamas Holding, the GOC, Petitioner, Crowley, and J.B. Hunt Transport, Inc. (J.B. Hunt) timely filed rebuttal briefs. Pursuant to the Department’s request, Crowley and Petitioner filed additional scope comments to the record of this proceeding.<sup>5</sup>

#### Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

#### Scope Comments

The Department received comments regarding the scope of this investigation from interested parties. As detailed in the accompanying Issues and Decision Memorandum,<sup>6</sup> we have not made any changes to the scope.

#### Scope of the Investigation

The merchandise subject to investigation is closed (*i.e.*, not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport<sup>7</sup> of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle

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(SCHL) (collectively, “Singamas”),” dated December 22, 2014; and “Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China (PRC): Verification Report of the Government of the People’s Republic of China (GOC),” dated December 22, 2014.

<sup>5</sup> On April 2, 2015, the Department instructed all interested parties to this investigation that filed scope comments on the record of the companion AD investigation to file those comments and rebuttals on the record of this instant investigation.

<sup>6</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, “Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People’s Republic of China: Issues & Decision Memorandum for the Final Determination,” dated concurrently with this notice (Issues and Decision Memorandum).

<sup>7</sup> “Intermodal transport” refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

(domestic containers). Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for “instruments of international traffic” pursuant to 19 U.S.C. 1322 and 19 CFR 10.41a may be classified under subheading 9803.00.50, HTSUS. For a complete description of the scope of the investigation, *see* Appendix II to this notice.

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum, which is hereby incorporated in, and adopted by, this notice.<sup>8</sup> This memorandum also details the changes we made since the *Preliminary Determination* to the subsidy rates calculated for the mandatory respondents and all other producers/exporters. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content. A list of the issues that parties have raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix I.

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<sup>8</sup> *See* Issues and Decision Memorandum.

### Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, the Department relied, in part, on facts available and, because one or more respondents did not act to the best of their ability in responding to the Department's requests for information, drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>9</sup> For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences," in the Issues and Decision Memorandum.

### Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to CIMC's and Singamas's subsidy rate calculations since the *Preliminary Determination*. For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Analysis Memoranda, all dated concurrently with this notice.<sup>10</sup>

### Final Determination

For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.*, a financial contribution and benefit within the meaning of section 771(5) of the Act, and that the subsidy is specific within the meaning of section 771(5A) of the Act. For further analysis, *see* the Issues and Decision Memorandum.

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<sup>9</sup> *See* sections 776(a) and (b) of the Act.

<sup>10</sup> *See* Memorandum to Angelica Townshend, Program Manager, from Ilissa Kabak Shefferman, International Trade Compliance Analyst, entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers (Domestic Dry Containers) from the People's Republic of China: Final Determination Calculations for CIMC," dated April 10, 2015; and Memorandum to Angelica Townshend, Program Manager, from David Cordell, International Trade Compliance Analyst, entitled "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers (Domestic Dry Containers) from the People's Republic of China: Final Determination Calculations for Singamas," dated April 10, 2015.

We determine the total estimated net countervailable subsidy rates to be:

| Exporter/Producer | Subsidy Rate |
|-------------------|--------------|
| CIMC              | 28.00%       |
| Singamas          | 17.13%       |
| All-Others        | 22.57%       |

#### Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of the public announcement of this notice in accordance with 19 CFR 351.224(b).

#### Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of domestic dry containers from the PRC that were entered or withdrawn from warehouse, for consumption on or after September 29, 2014, the date of publication of the *Preliminary Determination* in the *Federal Register*.<sup>11</sup> In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after January 27, 2015, but to continue the suspension of liquidation of all entries from September 29, 2014, through January 26, 2015.

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated individual estimated countervailable subsidy rates for the individually-investigated producers/exporters of the subject merchandise, CIMC and Singamas. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an “all-others” rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually

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<sup>11</sup> See *Preliminary Determination*, 79 FR at 58321.

investigated, excluding any zero and *de minimis* countervailable rates, and any rates determined entirely under section 776 of the Act. As described above, neither of the mandatory respondents' subsidy rates was zero or *de minimis* or was calculated entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all-others" rate by weight averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, for the "all-others" rate, we calculated a simple average of the rates of CIMC and Singamas.

#### International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final affirmative CVD determination. Because the final determination in this proceeding is affirmative, the ITC will make its final determination, in accordance with section 705(b)(2)(B) of the Act, as to whether the domestic industry in the United States is materially injured or threatened with material injury, or whether the establishment of an industry in the United States is materially retarded, by reason of imports of domestic dry containers from the PRC no later than 45 days after our final determination. If the ITC issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated CVDs for appropriate entries of merchandise in the amounts indicated above. If the ITC determines that material injury, threat of material injury, or material retardation of the establishment of an industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. We are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary

information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: April 10, 2015.

**Ronald K. Lorentzen,**  
*Acting Assistant Secretary*  
*for Enforcement and Compliance.*



## **Appendix I**

### **List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Application of the Countervailing Duty Law to Importers from the PRC
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Analysis of Comments

#### **CIMC Issues**

Comment 1: The Department should correct the Ad Valorem subsidy rate with respect to loans that CIMC received during the POI from the China Export-Import Bank

Comment 2: Whether CIMC is a State owned enterprise (SOE) such that it could benefit from the loans to SOEs program

Comment 3: Whether the CIMC Preferential Lending to SOEs loan program is specific

Comment 4: Whether the Department should apply adverse facts available in calculating the benefit CIMC received under the preferential lending to SOEs program

#### **Singamas Issues**

Comment 5: The sales value to be used as denominators to calculate subsidy rates with respect to Singamas

#### **Overlapping Issues**

Comment 6: Hot-Rolled Steel Sheet and Plate Less than Adequate Remuneration (LTAR) and whether the Department should reverse its findings regarding the hot-rolled LTAR benchmark.

- A) Whether the Department should use domestic Chinese steel prices on the record to determine whether the GOC provided hot-rolled steel for LTAR.
- B) Whether the Department properly found that “authorities” provided a benefit in the form of the provision of a good for LTAR
- C) Whether the Department properly found “Specificity”
- D) Benchmarks and calculation of benefit

Comment 7: Export Buyer’s Credits Program

Comment 8: Scope Exclusion Request

- VIII. Recommendation

## APPENDIX II

### Scope of the Investigation

The merchandise subject to investigation is closed (*i.e.*, not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport<sup>12</sup> of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including “53-foot containers,” “53-foot dry containers,” “53-foot domestic dry containers,” “domestic dry containers” and “domestic containers.” These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.

Domestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally define design, performance and testing requirements for closed van containers, but are not dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking<sup>13</sup> in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.

Domestic containers have the following actual exterior dimensions: an exterior length exceeding 14.63 meters (48 feet) but not exceeding 16.154 meters (53 feet); an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6 3/8 inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6 1/2 inches), all subject to tolerances as allowed by the AAR Specifications. In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, as required by the AAR Specifications. The stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames. Domestic containers also have two forward facing fittings at the front lower corners and two downward facing fittings at the rear lower corners of the container to facilitate chassis interface.

All domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional

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<sup>12</sup> “Intermodal transport” refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

<sup>13</sup> “Double-stacking” refers to two levels of intermodal containers on a rail car, one on top of the other.

manipulation or processing after entry into the United States to be made ready for use as a domestic container.

The scope of this investigation excludes the following items: 1) Refrigerated containers; 2) trailers, where the cargo box and rear wheeled chassis are of integrated construction, and the cargo box of the unit may not be separated from the chassis for further intermodal transport; 3) container chassis, whether or not imported with domestic containers, but the domestic containers remain subject merchandise, to the extent they meet the written description of the scope. Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for “instruments of international traffic” pursuant to 19 U.S.C. 1322 and 19 CFR 10.41a may be classified under subheading 9803.00.50, HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

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